

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>EVERETT HAMILL</b>	)	
Claimant	)	
VS.	)	
	)	Docket Nos. 170,367 & 170,371
<b>BRADY FLUID SERVICE</b>	)	
Respondent	)	
AND	)	
	)	
<b>CONTINENTAL WESTERN</b>	)	
<b>INSURANCE COMPANY</b>	)	
Insurance Carrier	)	
AND	)	
	)	
<b>KANSAS WORKERS COMPENSATION FUND</b>	)	

**ORDER**

Claimant has appealed the Award in this case by Administrative Law Judge Thomas F. Richardson on August 29, 1994

**ISSUES**

Claimant appeared by his attorney, Jerry L. Soldner of Garden City, Kansas. Respondent and its insurance company appeared by their attorney, James M. McVay of Great Bend, Kansas. The Kansas Workers Compensation Fund appeared by its attorney, Robert A. Anderson of Ellinwood, Kansas.

**RECORD AND STIPULATIONS**

The Appeals Board has considered the record and adopted the stipulations listed in the Award.

**ISSUES**

Claimant asks the Appeals Board to review the findings relating to nature and extent of claimant's disability.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments of the parties, the Appeals Board finds that the Award by the Administrative Law Judge should be affirmed in all respects. The Appeals Board, therefore, awards no permanent partial disability for the injury of November 7, 1991 (Docket No. 170,371). For the injury of June 2, 1992 (Docket No. 170,367) the Appeals Board finds that claimant sustained a fifty percent (50%) permanent partial loss of the use of the left leg.

Claimant argues that in addition to the left leg injury, he suffered a permanent low back injury and the Award should be for general body disability, not a scheduled injury only.

The parties stipulated the claimant suffered personal injury by accident arising out of and in the course of his employment on the two dates alleged. The injury of November 7, 1991 occurred when claimant slipped on ice and fell, injuring his left leg and twisting his back. Claimant received treatment at the direction of Dr. Myron Zeller and missed one week of work. After releasing claimant to return to work, Dr. Zeller continued to treat claimant and eventually referred the claimant to Dr. John Gilbert, an orthopedic surgeon. Claimant did not complain about pain in his back at that time. Dr. Gilbert saw and examined claimant several times thereafter, both to treat the knee and for an injury to his right elbow, unrelated to this claim. Claimant was also treated by Dr. Zeller in December of 1991 for a smashed left little finger, also unrelated to this claim. From December 1991 through April of 1992, claimant saw both Dr. Zeller and Dr. Gilbert, but continued to work at full duty.

On June 2, 1992, claimant suffered the second injury to his left knee when he slipped in a ditch while trying to clean out an oil tank. This second claim was assigned Docket No. 170,367. The Appeals Board agrees with the finding by the Administrative Law Judge, based upon claimant's testimony and the medical records, that claimant's injury to his knee was healing until the new injury of June 2, 1992. There is, as the Administrative Law Judge has found, no basis for awarding any permanent disability as a result of the November 7, 1991 accident. The injury was improving and no impairment rating had been given.

After the injury of June 2, 1992, Dr. Gilbert continued to treat claimant and on August 24, 1992 performed arthroscopic surgery. Dr. Gilbert followed claimant post-operatively until March 15, 1993 when he released claimant from his care with regard to the left knee injury. Dr. Gilbert rated claimant's injury as a fifty percent (50%) permanent partial loss of use of his left leg.

Claimant offers the testimony of Dr. C. Reiff Brown. Dr. Brown concluded claimant had a fifty-seven percent (57%) permanent partial impairment of the left leg. He also found, however, permanent impairment of the low back which, by history, he attributes to claimant's work-related injuries.

The Appeals Board does not, after reviewing the record, agree with Dr. Brown's attribution of permanent impairment to claimant's injury at work with respondent. First, the Appeals Board notes claimant had suffered a permanent injury to his low back in 1981. Dr. Gilbert had, at that time, assigned a five percent (5%) permanent partial impairment to claimant's low back injury. Claimant points out that Dr. Beggs' notes in February of 1985 indicate his low back injury had resolved. The Appeals Board notes, however, that the record also includes a history of a strain in 1986 with possible acute radiculopathy. The records reflect the strain was superimposed upon degenerative disc disease. From this evidence it appears more probably true than not claimant had a permanent impairment in his low back prior to his injuries alleged in his present claim.

The medical records for treatment of the two injuries made in this claim reflect a possible temporary aggravation of the symptomatology of the low back, but do not support claimant's contention that he suffered additional permanent injury. Dr. Gilbert's records do not refer to the low back until December 4, 1992. Dr. Zeller's records indicate x-rays of the lumbar spine show degenerative changes consistent with the patient's age but no acute abnormality. The records of Dr. Beggs, who continued to treat claimant's right leg throughout this same period of time, also reflect no complaint of low back problems. As previously noted, Dr. Gilbert rates only the lower extremity. The Appeals Board concludes and finds that claimant has not sustained his burden of establishing permanent partial impairment to his low back as a result of the injuries in the course of his employment with respondent. The Appeals Board further adopts the impairment rating given by Dr. Gilbert and finds claimant suffered a fifty percent (50%) permanent partial loss of use of his right leg.

**WHEREFORE**, the Appeals Board finds that the Award of Administrative Law Judge Thomas F. Richardson rendered August 29, 1994 should be, and the same is hereby, affirmed.

### **AWARD**

**WHEREFORE**, an award of compensation is entered in accordance with the above findings in favor of the claimant, Everett W. Hamill, and against the respondent, Brady Fluid Service, and its insurance carrier, Continental Western Insurance Company (50%) and the Kansas Workers Compensation Fund (50%) for an accidental injury occurring on June 2, 1992.

The claimant is entitled to 41.86 weeks of temporary total disability at the rate of \$289.00 per week or \$12,097.54 followed by 79.07 weeks permanent partial disability, at the rate of \$289.00 per week, in the amount of \$22,851.23 for a 50% permanent partial loss of use of the left leg, making a total award of \$34,948.77.

Pursuant to the stipulation, an award is entered in favor of the respondent and insurance carrier and against the Kansas Workers Compensation Fund for an amount equal to 50% of all sums heretofore paid to or on behalf of claimant and for 50% of the remaining award.

Claimant's contract of employment with his attorney is approved subject to the provisions of K.S.A. 1991 Supp. 44-536.

Fees and expenses of administration of the Kansas Workers Compensation Act are assessed against the respondent and insurance carrier to be paid direct as follows:

Tri State Reporting	
Regular Hearing	\$257.23
Tri State Reporting	
Deposition of Dr. Gilbert	\$352.10
Don K. Smith & Associates	
Deposition of Jerry Hardin	\$369.75
Kelley, York & Associates	
Deposition of Karen Terrill	\$367.84
Underwood & Shane	
Deposition of Keith Brady	\$146.00
Underwood & Shane	
Deposition of Everett Hamill	\$296.00
Underwood & Shane	
Deposition of Kathy Adams	\$204.00

Underwood & Shane  
Deposition of Dr. Brown

\$218.75

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August 1995.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Jerry L. Soldner, Garden City, KS  
James M. McVay, Great Bend, KS  
Robert A. Anderson, Ellinwood, KS  
Thomas F. Richardson, Administrative Law Judge  
Philip S. Harness, Director